

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEX AGUILAR, JR., and P.A.,)	
by and through her Guardian)	
Ad Litem, Florence Ahumada,)	
AND THE ESTATE OF ALEX)	
AGUILAR, SR.,)	NO. CV 17-04382
)	-CBM(MRWx)
Plaintiffs,)	
)	
VS.)	
)	
CITY OF LOS ANGELES, ET AL.,)	
)	
Defendants.)	
_____)	

DEPOSITION OF GARY MICHAEL VILKE, M.D.

Pasadena, California

Tuesday, June 5, 2018

REPORTED BY:

JOHN M. TAXTER
CSR NO. 3579, RPR

JOB NO.
91935KAY

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1 Q Okay. And what about with people who have 13:21:59
2 a tolerance? People who have a tolerance with 13:22:01
3 controlled substances, they're less likely to engage 13:22:05
4 in irrational behavior, potentially, with a lower 13:22:08
5 level of -- of methamphetamine or other narcotics; 13:22:11
6 correct?

7 A It -- again, that varies individual to 13:22:17
8 individual -- 13:22:19

9 Q Exactly. 13:22:19

10 A -- but -- one would expect that, but the 13:22:20
11 reality is we see people who are chronic users who 13:22:22
12 do impulsive things with barely using any drugs and 13:22:26
13 not understanding why it happens. So things happen 13:22:29
14 because of impulsivity. It's not -- it's not a 13:22:33
15 level issue. 13:22:34

16 Q And when you say you see, your pool of 13:22:35
17 individuals that you're observing are people brought 13:22:38
18 to the ER; correct? 13:22:41

19 A And to the jail. I've taken care of 13:22:43
20 thousands of people who have used meth, you know, 13:22:46
21 shortly and chronically. 13:22:48

22 Q You're not necessarily privy to people who 13:22:50
23 are -- have some level of controlled substances 13:22:54
24 in -- in their body and they're actually acting in 13:22:57
25 a -- in a non-erratic way. 13:23:01

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1 They're not brought to your attention 13:23:03
2 because they wouldn't call a doctor in those 13:23:05
3 circumstances; correct? 13:23:07
4 A There are people who use methamphetamine 13:23:10
5 that have it in their system that may not be acting 13:23:13
6 in an irrational manner. I think we acknowledge 13:23:16
7 that that does happen. I'm saying it commonly does 13:23:19
8 happen that people will be more irrational on these 13:23:22
9 drugs, but it's not that you have to be irrational, 13:23:25
10 if you are using the drugs. 13:23:28
11 Q And my point is that, when you are making 13:23:29
12 this conclusion about that it's commonly causing 13:23:31
13 them to act erratic, your study group that you are 13:23:34
14 making this assessments from are people who are 13:23:37
15 actually brought to your attention because they're 13:23:42
16 engaged -- they're acting in a manner that's -- that 13:23:44
17 seems to demonstrate they're under the influence of 13:23:48
18 a controlled substance; correct? 13:23:50
19 A Well, it's part of the population. I also 13:23:54
20 see a lot of them at the jail who have done the same 13:23:56
21 things, but they're not currently under active drug 13:23:59
22 use. 13:24:02
23 Q So you're saying these other people in the 13:24:02
24 jail, they're not under the influence of drugs, but 13:24:05
25 they are acting in an erratic, irrational manner, as 13:24:08

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1 well?

2 A No. They -- they have gone and acted in 13:24:11
3 irrational manners or erratic manners but are no 13:24:14
4 longer under the influence, so I'm not seeing them 13:24:19
5 just in their acute phase, if that's what you're 13:24:20
6 inferring, from the emergency department. I've seen
7 people in the subacute phase. 13:24:23

8 Q So in the subacute phase it's not 13:24:23
9 necessarily the methamphetamine that's influencing 13:24:26
10 them because it's not acute anymore. They're just 13:24:28
11 acting in an irrational and erratic manner. 13:24:31

12 MS. KHANYAN: Objection. Misstates his 13:24:34
13 testimony. 13:24:36

14 THE WITNESS: I'm not talking about their 13:24:37
15 behavior. Their behavior is improved, but they 13:24:38
16 report that they've had erratic behavior. So that's 13:24:40
17 what got them into trouble, using the drugs. But 13:24:42
18 they -- I didn't actually see them in the emergency 13:24:45
19 because they weren't brought there for that. 13:24:47

20 BY MR. KAYE: 13:24:49

21 Q Oh. So you're in the jail engaged in 13:24:50
22 interviews, and they are making -- self-reporting 13:24:51
23 that they engaged in erratic behavior based on the 13:24:53
24 fact that they were under the influence of a 13:24:56
25 controlled substance at another time? 13:24:58

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1	A	Right. Running around naked in public	13:25:00
2		doesn't get them to the emergency department. It	13:25:02
3		gets them to jail on methamphetamine through	13:25:04
4		erratic, impulsive behavior, but it doesn't rise to	
5		the level necessarily of being seen by an ER	13:25:08
6		physician. But I'll see these people -- people in	13:25:10
7		the jail. So that's -- that's part of the	13:25:12
8		population I'm referring to.	13:25:14
9	Q	Okay. So I just want to understand the	13:25:15
10		population that is the basis for your -- your actual	13:25:18
11		opinion. The first one are people in the emergency	13:25:20
12		room that are acting in a way that demonstrates that	13:25:22
13		they're under the influence of a controlled	13:25:25
14		substance.	13:25:26
15		The other people are in the jail setting	13:25:29
16		who have been -- who have engaged in previously, and	13:25:32
17		now they're in the subacute phase -- they've engaged	13:25:35
18		in erratic behavior and they're self-reporting.	13:25:39
19		That's -- those are the two populations	13:25:40
20		that make up your determination right now, your	13:25:42
21		conclusion?	13:25:46
22	A	That -- that form my opinion that this is a	13:25:47
23		common behavior that we see, yes.	13:25:49
24	Q	Okay. Thank you. So, again, if you look	13:25:51
25		at your line 2 of page 10, you say:	13:26:00

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1 "Mr. Aguilar stuffed a baggy of 13:26:06
2 drugs down his throat despite the 13:26:08
3 fact the fact that a rational person 13:26:10
4 would likely realize it was too large 13:26:12
5 to easily swallow." 13:26:14
6 Again, if -- well, first of all, you're not 13:26:16
7 a psychologist or a psychiatrist; correct? 13:26:20
8 A I am not a Board certified psychiatrist. 13:26:26
9 Correct. 13:26:29
10 Q And you have -- your -- your opinion with 13:26:29
11 regard to what a rational person would do is not 13:26:34
12 based on any kind of specific expertise, other than 13:26:39
13 your experience as an ER doctor and experience as a 13:26:46
14 human being; correct? 13:26:49
15 A And taking care of thousands of psychiatric 13:26:53
16 patients, as well, if you're referring to rational 13:26:56
17 and irrational behavior. 13:26:59
18 Q Okay. 13:27:01
19 A So -- but -- but beyond that, that's -- 13:27:02
20 that's where I get my expertise from. 13:27:03
21 Q Okay. And do you have any kind of degree 13:27:05
22 reflecting psychiatry or psychology? 13:27:07
23 A Degree, no. 13:27:10
24 Q Okay. And you have no knowledge reflecting 13:27:11
25 what -- whether it was rational for Mr. Aguilar to 13:27:17

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1 try and put a piece -- a bindle in his mouth; right? 13:27:23
2 You don't know about him in particular, what was 13:27:27
3 going on in his mind? 13:27:29
4 MS. KHANYAN: Objection. Incomplete 13:27:31
5 hypothetical. 13:27:32
6 THE WITNESS: I don't know what was going 13:27:32
7 on in his mind at the time that he did that. 13:27:33
8 Correct. 13:27:36
9 BY MR. KAYE: 13:27:36
10 Q So -- and we've also gone through -- would 13:27:36
11 you deem it irrational to be able to just place the 13:27:39
12 bindle in the mouth rather than -- in order to hide 13:27:44
13 it from law enforcement rather than swallowing it? 13:27:49
14 A You're asking me if I think that would be 13:27:55
15 irrational, let's say. To think you're going to get 13:27:57
16 away with hiding a large bindle in your mouth would 13:28:00
17 not be a rational decision, so I would say "yes." 13:28:04
18 Q Well, that's a question of having the 13:28:06
19 insight. 13:28:07
20 If nobody saw him putting it in his 13:28:08
21 mouth -- correct? -- and he was there -- then 13:28:10
22 arrested and brought into custody, wouldn't that be 13:28:13
23 "rationalable" -- a rational means of trying to 13:28:16
24 avoid detection? 13:28:19
25 MS. KHANYAN: Objection. Incomplete 13:28:20

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1 MS. KHANYAN: Objection. Incomplete 13:29:30
2 hypothetical. 13:29:32
3 THE WITNESS: My answer would stand. Yes. 13:29:35
4 So you're in the middle of a strip search and you're 13:29:37
5 putting something in your mouth. That -- that would 13:29:39
6 still be not a rational place to try to hide it, 13:29:41
7 ultimately. 13:29:44
8 BY MR. KAYE: 13:29:45
9 Q Are these opinions about whether 13:29:45
10 Mr. Aguilar's actions were rationally based -- are 13:29:47
11 they based on your medical training or expertise? 13:29:50
12 A Certainly, I have a lot of expertise in 13:29:57
13 behaviors that occur with certain drugs and 13:30:00
14 individuals and psychiatric disorders and people 13:30:03
15 without drugs, so I certainly have a background of 13:30:05
16 that where I see a cross-section of humanity that's 13:30:09
17 different than the average person. So I think there 13:30:13
18 is some background and expertise from my medical 13:30:16
19 training and experience. 13:30:18
20 Q Have you ever taken any courses or any, you 13:30:18
21 know, continuing education that would specifically 13:30:22
22 focus on the rationality of a person in a jail 13:30:24
23 situation of hiding drugs? 13:30:30
24 A I've certainly been at CMEs where we've 13:30:34
25 talked about behaviors that happened in the jail, 13:30:38

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1 the way things happen where people do things and 13:30:39
2 what happens when they're under the influence of 13:30:43
3 drugs that are sort of mind altering or psychiatric 13:30:45
4 disorders, the perceptions that -- the perceptions 13:30:48
5 that are altered. So I have had some education in 13:30:49
6 those areas. 13:30:51
7 Q And has there ever been any course that 13:30:51
8 focused specifically on the rationality of hiding 13:30:54
9 drugs? 13:30:58
10 A Focused? I think, in part, it's -- I have 13:31:00
11 had, you know, some training on the -- where people 13:31:04
12 hide them, under what circumstances they hide them, 13:31:06
13 but as far as what's going on in their heads, not 13:31:10
14 necessarily. 13:31:14
15 Q Okay. And have you ever -- you -- you say 13:31:15
16 that it was irrational. 13:31:22
17 The esophagus is -- has -- unlike the 13:31:24
18 trachea is a much more expansive organ; correct? 13:31:28
19 A It has more pliability or flexibility than 13:31:32
20 the trachea. Correct. 13:31:35
21 Q And with regard to -- have you -- have you 13:31:36
22 ever seen a person successfully swallow an object of 13:31:53
23 relatively the same size as this bundle? 13:32:00
24 A I've seen thinner objects successfully 13:32:04
25 swallowed, pencils and knives, but not necessarily 13:32:08

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1 likely were altering his ability to 13:35:06
2 think and function rationally and 13:35:09
3 clearly." 13:35:10
4 So first of all, people who are completely 13:35:11
5 rational -- you have apparently some crime -- 13:35:16
6 criminal exposure. People who are completely 13:35:19
7 rational who are engaged in criminal conduct, they 13:35:23
8 don't necessarily comply with the directions of the 13:35:27
9 officers. 13:35:29
10 Is that -- is that your experience? 13:35:29
11 A That's a -- that's a fair statement. It 13:35:33
12 does happen. 13:35:35
13 Q And they're acting in a -- perhaps not to 13:35:36
14 their best interest, but they're acting rationally. 13:35:38
15 They're not deemed, because they're not cooperating, 13:35:41
16 that they're acting irrationally. 13:35:44
17 Isn't that fair? 13:35:46
18 A I think it would be circumstance by 13:35:46
19 circumstance, you know. 13:35:49
20 Q Right. But theoretically, it's possible? 13:35:49
21 A Theoretically, it's possible. Sure. 13:35:51
22 Q And when you say "the drugs in his system 13:35:55
23 likely were altering his ability to think and 13:36:00
24 function rationally and clearly," now, first of all, 13:36:02
25 we know that you can't make a determination based on 13:36:06

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1 his -- the -- the -- the measurement of the drugs in 13:36:10
2 his system. 13:36:17

3 So are you making this determination solely 13:36:18
4 on the -- the behavior itself; that the fact that 13:36:20
5 he's acting, according to these reports, a little 13:36:24
6 fidgety and then he's engaged in this swallowing, 13:36:28
7 you're making this determination that it was the 13:36:32
8 drugs that caused him to attempt to swallow this? 13:36:35

9 MS. KHANYAN: Objection. Misstates his 13:36:38
10 testimony. 13:36:40

11 THE WITNESS: That the behavior is part of 13:36:41
12 the reason with the positive drug screen that shows 13:36:42
13 some effect of the drugs on his system, on his 13:36:45
14 physiology, and that we know that drugs have a 13:36:48
15 mind-altering effect on people. So it's not 13:36:53
16 completely clear, not -- clearly, you're not in your 13:36:56
17 best state of mind. 13:36:59

18 That's why you asked me the question at the 13:37:00
19 beginning of the deposition, "Are you in the best 13:37:02
20 position? Do you take medication?" 13:37:05

21 Those types of things are asked. It's not 13:37:07
22 your clear state of mind. That's what I'm referring 13:37:10
23 to. 13:37:13

24 BY MR. KAYE: 13:37:13

25 Q What do you mean by "likely," "likely were 13:37:14